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1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 JOANNE HART and AMANDA)
5 PARKE, on behalf of)
6 themselves and all others)
7 similarly situated,)
8 Plaintiffs,)
9 -vs-) No. 1:15-cv-04804
10 BHH, LLC d/b/a BELL &) (WHP)
11 HOWELL and VAN HAUSER,)
12 LLC,)
13 Defendants.)
14

15 The deposition of PHILIP C. WHITFORD, Ph.D.,
16 called for examination, taken before GAIL LIVIGNI,
17 CSR No. 84-1965, a Notary Public within and for the
18 County of Will, State of Illinois, and a Certified
19 Shorthand Reporter of said state, at Suite 1100, 33
20 West Monroe Street, Chicago, Illinois, on the 12th
21 day of January, A.D. 2018, commencing at 9:30 a.m.

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23
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1	A. No.	09:57:06
2	Q. Okay. Now, please take a look at	09:57:08
3	Exhibit 1. Was this report signed by you?	09:57:16
4	A. I don't recall having put a signature on	09:57:24
5	it.	09:57:28
6	Q. So the answer is no?	09:57:30
7	A. It was transmitted by computer, so the	09:57:32
8	answer is no, I didn't have a means to sign it.	09:57:36
9	Q. Okay, thank you. And the same question	09:57:40
10	for Exhibit 2?	09:57:42
11	A. Same answer.	09:57:42
12	Q. What is -- what was your assignment in	09:57:44
13	this case?	09:57:50
14	A. To read and evaluate the depositions,	09:57:52
15	the comments, rebuttal comments, and the actual	09:58:00
16	data of tests and give my best appraisal of the	09:58:04
17	validity or lack of validity of those tests.	09:58:14
18	Q. Are you an expert witness in this case?	09:58:16
19	A. Yes.	09:58:20
20	Q. Are you rendering opinions as to the	09:58:22
21	efficacy of the Bell & Howell test repellers in	09:58:28
22	repelling and driving out rodents?	09:58:32
23	A. I am.	09:58:34
24	Q. Are you rendering any opinions as to the	09:58:34

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1	through at the quiet setting, right?	11:10:30
2	A. Well, by definition, if I couldn't hear	11:10:32
3	anything on it, there is no sonic.	11:10:34
4	Q. Okay. Would you agree with me that the	11:10:38
5	word primarily would mean for the most part or	11:10:42
6	mainly?	11:10:46
7	MR. OSTOJIC: Object to form, foundation.	11:10:48
8	BY THE WITNESS:	11:10:52
9	A. That's its meaning.	11:10:52
10	BY MR. KOPEL:	11:10:54
11	Q. Okay. And by definition, right, if the	11:10:54
12	word primarily is there, that's implying that there	11:10:56
13	is something else there as well, right?	11:10:58
14	MR. OSTOJIC: Object to form, foundation.	11:10:58
15	BY THE WITNESS:	11:11:00
16	A. We often use words in our sentences to	11:11:00
17	add just a little more meaning or variation to them	11:11:06
18	which don't really have a substantive place in what	11:11:10
19	we're trying to say. Think of our president.	11:11:14
20	BY MR. KOPEL:	11:11:20
21	Q. So is it -- it's your belief that they	11:11:20
22	added the word primarily here for no reason?	11:11:28
23	MR. OSTOJIC: Object to form, foundation, may	11:11:32
24	call for speculation as to what the manufacturers	11:11:34

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1	Q. And you've not seen test results	11:12:46
2	indicating whether or not sonic sound is present at	11:12:50
3	the quiet setting, have you?	11:12:54
4	A. I'm trying to remember whether Mankin	11:13:00
5	tested it, T-Pro or not.	11:13:04
6	Q. Mankin did not test it.	11:13:06
7	A. Okay, then I probably have not seen	11:13:06
8	that.	11:13:08
9	Q. Okay. Almost done with this document.	11:13:12
10	Okay. Can you please look at the	11:13:18
11	section here which says about ultrasonic and sonic	11:13:20
12	sounds?	11:13:24
13	A. Uh-huh.	11:13:24
14	Q. Do you see the second sentence says	11:13:26
15	ultrasound cannot travel through walls or closed	11:13:30
16	doors?	11:13:34
17	A. Uh-huh.	11:13:34
18	Q. Do you agree with that?	11:13:34
19	A. Closed doors is a good question. It	11:13:38
20	depends where the unit is placed. In my case,	11:13:40
21	there is an inch gap under the back door in my	11:13:46
22	hallway. It can get under that. You'd have to	11:13:50
23	have a securely sealed door to stop it.	11:13:52
24	Q. Okay. But you never -- I mean in the	11:13:54

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1	since then have kept the same pattern. 11:58:38
2	Q. You know, without the data from 2010 or 11:58:42
3	other years, let's say -- 11:58:48
4	A. It would be meaningless. 11:58:50
5	Q. Okay, so let me just finish my question. 11:58:52
6	You're anticipating correctly. If you had only 11:58:54
7	looked at 2009 with the unit on and seen zero, it 11:58:56
8	would be a meaningless result, is that correct? 11:59:00
9	A. From a scientific standpoint, 11:59:02
10	absolutely. 11:59:04
11	Q. Why? 11:59:06
12	A. Because you have to have a control. 11:59:06
13	Q. And without a control, as a matter of 11:59:06
14	science, the data from a study is meaningless, is 11:59:14
15	that correct? 11:59:18
16	A. Pretty much so, yes. 11:59:18
17	Q. Can you please look at a portion of 11:59:32
18	this -- of the Transonic report titled, "Study 11:59:40
19	Design?" 11:59:44
20	A. Yes. 11:59:48
21	Q. I'm looking at the third sentence here. 11:59:54
22	It reads, "This unit was set to the medium volume 11:59:58
23	and spider setting on the options for sound output 12:00:04
24	for the test. I did not use the mice sound setting 12:00:06

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1	since prior spiders tests had indicated mice
2	responded more strongly to the spider setting than
3	to the predesignated mice setting of the unit's
4	controls," do you see that?
5	A. I do.
6	Q. Okay. So during the course of your
7	testing with Transonic Pro when the unit was set to
8	on, was it set to the medium volume and spider
9	setting?
10	A. No, the medium volume is incorrect.
11	It's never been used where I could hear it which
12	means it had to be on the quiet setting. It has
13	never produced an audible sound for me.
14	Q. Is that an error in this report?
15	A. This is an error in that report.
16	Q. Can you turn back to the abstract,
17	please? You know, never mind.
18	Okay. So your initial and rebuttal
19	export reports, Exhibit 1 and 2, say that it was
20	turned to the quiet setting, whereas the study says
21	that it was turned to the medium setting, is that
22	correct?
23	A. That's what it looks like.
24	Q. And here the study you conducted, the